CHARLES M. BARON
ATTORNEY AT LAW

1380 N.E. MIAMI GARDENS DRIVE
SUITE ~~206~~ 230
NORTH MIAMI BEACH, FLORIDA 33179
TEL (305) 944-5656

FAX (305) 944-5756

TRIAL AND APPELLATE PRACTICE IN
FEDERAL AND STATE COURTS

PERSONAL INJURY

CIVIL RIGHTS

GENERAL PRACTICE

April 13, 2006

Attention: Earl Jones
Miami-Dade County
Dept. of Planning and Zoning
111 N.W. 1st Street
Suite 1210
Miami, FL 33128-1902

Murray A. Greenberg, Esq.
County Attorney
111 N.W. 1st Street
Suite 2810
Miami, FL 33128-1993

Re: Resolution No. Z-9-06; *Rodolfo J. Dominguez, et al. v. Miami-Dade County*

Dear Sirs:

Enclosed for service on your offices is my client's Petition for Writ of Certiorari filed in Circuit Court to seek quashal of the above zoning resolution rendered March 14, 2006, as well as Petitioners' Motion for 30-Day Extension of Time to Amend Petition and Add Full-Size Plans to Record.

Also filed with the Court is a voluminous appendix containing the record. Please contact me at your earliest convenience to advise as to which of your two offices or which individual I should deliver a copy of the appendix to. Please also have counsel contact me to discuss resolution of the motion for extension.

Also enclosed is a courtesy copy of my clients' Complaint for Injunctive and Declaratory Relief Pursuant to Florida Statute Section 163.3215 filed in Circuit Court to challenge the above resolution's consistency with the CDMP. This will be served on the County via process server - unless the County wishes to waive service. Please advise.

Thank you for your attention.

Very truly yours,

Charles M. Baron, Esq.

Enc.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

RODOLFO J. DOMINGUEZ,
RICARDO WON, FELIX
QUEVEDO, AND MARGARITA
QUEVEDO,

APPELLATE DIVISION

CASE NO.:

Petitioners,

LOWER TRIBUNAL NO.: Z-9-06

vs.

MIAMI-DADE COUNTY,

Respondent.
_____/

PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 9.100(f)(2), FLORIDA RULES OF APPELLATE PROCEDURE

RODOLFO J. DOMINGUEZ, RICARDO WON, FELIX QUEVEDO, AND MARGARITA QUEVEDO, Petitioners, by and through undersigned counsel, petition this Court for a Writ of Certiorari to quash Resolution No. Z-9-06 of the Board of County Commissioners of Miami-Dade County, Florida, a development order approving the application of CAP Investments, LLC for a district boundary change (rezoning) for property located between Bird Road and S.W. 42nd Street on the west side of S.W. 119th Court in unincorporated Miami-Dade County, Florida, rendered on March 14th, 2006, and state in support thereof:

JURISDICTION

This Court has jurisdiction pursuant to Rule 9.030(c)(2), Fla.R.App.P.

REFERENCES TO THE RECORD

Petitioners have filed herewith an Appendix consisting of seven volumes containing the record. In this Petition, references to the record shall be designated as "A" followed by appendix volume number and page number (*e.g.*, "A1-1" means Appendix Volume I, Page 1) and on occasion line numbers ("L. ___").

Volume I consists of pertinent records in the County file up to the time of the first hearing (before Community Zoning Appeals Board). Volume II consists of pertinent records in the County file up to the time of the second hearing (before Board of County Commissioners). Volume III consists of the traffic study that was commissioned by Petitioners and filed for the second hearing.

Volume IV consists of records filed and presented by Petitioners in a binder at the second hearing. As this volume contains lettered tabs, references to A4 shall include the tab letter followed by page number (*e.g.*, "A4 - Tab A-1")

Volume V contains the transcript of the November 8, 2005 hearing before the Community Zoning Appeals Board and shall be designated as "T.A5".

Volume VI contains the transcript of the March 9, 2006 hearing before the Board of County Commissioners and shall be designated as "T.A6".

Volume VII contains a DVD video of the March 9, 2006 hearing before the Board of County Commissioners, which can be viewed on a computer or DVD player. (The DVD contains Petitioner's traffic expert's video presentation at the hearing and a power point photo presentation at the hearing.)

The Miami-Dade County Code shall be referred to as "Code" and section numbers.

PARTIES

Petitioners are aggrieved parties who were objectors below. They each own single-family homes on one and a quarter acre lots adjacent to the subject rezoned site. RODOLFO J. DOMINGUEZ owns and resides with his wife at 11941 S.W. 43rd Street. RICARDO WON owns and resides with his wife and two minor children at 11955 S.W. 43rd Street. FELIX QUEVEDO and his wife MARGARITA QUEVEDO own and reside at 11947 S.W. 43rd Street, and they own two other homes on S.W. 43rd Street as well. T.A6-12.

The location of their lots is seen at A-2. The Quevedos have lots 26, 27, and 31. The Wons have lot 30, and the Dominguezes have lot 32. A-2, T.A6-22.

Respondent MIAMI-DADE COUNTY governs and makes zoning decisions for the unincorporated areas of the county. Rezoning applications are heard by the

Community Zoning Appeals Board (also known as Community Council), and appeals therefrom are heard by the Board of County Commissioners *de novo*.

The County approved the subject application of developer CAP Investments, LLC to rezone a 3.4 acre site from RU-5A (semi-professional office district) to OPD (Office Park District) for a specific site plan for a medical office complex with two office buildings containing approximately 123,000 square feet of office space and a six-story parking garage building.

FACTS

The subject property is a 3.4 acre site now consisting entirely of single-family homes in a development called Second Addition to Southern Estates. Said homes have been there since the 1960's. A1-19 (aerial); A4-Tab E-31). (Legal description at A1-1). These lots were formerly zoned RU-1 (single-family). In 1997, the Commission voted 6-4 to rezone them to RU-5A, semi-professional office district, which permits office building no higher than two stories. A1-20-2 (RU-5A is under Code §§33-223.6 - 223.11. The two-story restriction is at §33-223.9(b).) However, no office building was were ever built on any of the lots.

Petitioners' homes are immediately adjacent to the subject site on its south side, separated only by a canal. A1-18,19. Their homes are on one and a quarter-acre properties zoned EU-1 (single-family one acre estate district). A1-18,19. Immediately

to the south of Petitioner's properties are lands zoned EU-2 (single-family five acre estate district) and AU (agricultural). These EU-1, EU-2, and AU lands make up a rural area called "Horse Country". T.A6-12, L. 16-19.

Petitioners purchased their homes long before the present applicant took over the subject site. T.A5 - 13, L. 7-13.

Immediately adjacent to the subject site on its west and north sides, across the street, are Second Addition to Southern Estates single-family homes, zoned RU-1. A1-27, A4-TabE -31. (The homes are along Bird Road, which at that point is four lanes and curves in a southwest-northeast direction, gradually switching Bird Road from S.W. 40th Street to S.W. 42nd Street to the west of the site. A4 - TabA-2.

The entire Second Addition to Southern Estates development, including the subject site, is encumbered by a recorded restrictive covenant limiting development to single-family homes only. Said covenant, made by the original developer to the property owners, is still in effect today. A4-Tab E-32-38, 46.

To the east of the subject site is a property containing a hospital and medical complex, which is zoned BU-2. A4 - TabA-2. That property is bordered on the east by the Florida Turnpike Extension.

The applicant below, a private corporation, recently purchased all of the single-family properties on the subject site and filed an application for a district

boundary change under Miami-Dade County Code §33-311(A)(8) and (F). It sought to rezone the site to OPD, Office Park District, which is under Code §§33-284.29 - 284.38, which allows buildings eight stories or 100 feet in height. §33-284.34.

The applicant submitted a site plan for a medical office complex with one eight-story building (100' height, A1-2) and one four-story building (70' height, A1-56) with a combined 123,000 square feet of office space, as well as a six-story parking garage with rooftop parking (90' height, A1-48, 37) on the south edge of the site. It proffered a covenant to build that site plan only. A4-Tab E-39.

CZAB Hearing

The application was heard and approved by the Community Zoning Appeals Board ("CZAB") by a 4-2 vote[1] on November 8th, 2006. T.A5. No testimony whatsoever, by either lay or expert witnesses, was presented in support of the application. Instead, applicant's counsel simply submitted into the record the site plan and architectural drawings and proffered a declaration or restrictions covenanting that only that site plan would be erected on the site. A1-5; T.A5 - 4-9. The Department of Planning and Zoning filed its recommendation in favor of the project. A1-25-31.

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[1] Of the CZAB members who resided within the boundaries for that board, it was an even closer 3-2 vote. T.A6 - 29; A.4 - Tab C.

At the close of the applicant's brief presentation by counsel, the Chair asked if there were any objectors, and upon seeing a number of hands, stated "oh, wow, okay" and then stated *he would allow only a total of three objectors to testify.* He ordered the objectors to decide amongst themselves which three out of their crowd would come up to testify.[2] T.A5 - 10-11.

Rodolfo Dominguez testified that the proposed project would deprive him and the other property owners on the south side "the fundamental right of the use and joy of our homes, and thereby the sanctity of our homes." T.A5 - 12. He testified to the fact that his and his neighbors' homes have "wall-to-wall, floor-to-ceiling glass" facing their backyards (looking north towards the subject site). *Id.*

Mr. Dominguez further stated, "When we purchased our home, one of the overriding considerations was that it was an agricultural single family area where the homes have sufficient land to allow us to enjoy our vision of privacy....We purchased our home years before the applicant [purchased the subject site]." T.A5 - 13, L. 7-13.

He also testified that there was basically an over-abundance of vacant office space in nine two-story office buildings within four blocks of the site. T.A5 - 13, L. 22 - 14, L, 6.

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[2] The Assistant County Attorney at said hearing shockingly stated nothing of record to the Chair of about this obvious constitutional violation.

Maggie Quevedo also testified to that fact. T.A5-18, L. 19-21. She then stated, "These huge buildings will impact our lives, the quality of our children's lives, our grandchildren. I mean, these are massive eight-story buildings, four and eight, six. ....we beg you to please consider those on the south side that spend lots of our time and energy to have a green area with our family...." A5 - 19. Felix Quevedo testified as to the residential character of the surrounding area, with the sole exception of the property to the east of the proposed site. A5 - 16.

All facts that the objectors testified to were undisputed.

Prior to the 4-2 vote in favor of the application, a dissenting councilman, Hon. Julio R. Caceres, gave two basic reasons to deny the application - one, that Bird Road in that area already has horrible traffic conditions at this time (stating that it takes 45 minutes to get from 167th Avenue to the Turnpike Extension and that Bird Road "is mayhem at any time of the day"), and two, that there was no need for additional medical offices in the area. T.A5 - 38-39. No one at the hearing disputed his statements.

On the other hand, the Chair disposed of the objectors' arguments by stating that they had no right to privacy because "we don't live any more in that type of society" and told them to "put a robe on" and "drop the blinds". T.A5 - 43.

At the CZAB hearing, the applicant failed to disclose to the board that there existed a restrictive covenant prohibiting anything other than single-family development at the subject site of a maximum two stories heigh at the subject site.

Appeal to BCC

Petitioners then appealed the CZAB resolution to the Board of County Commissioners (hereinafter "BCC" or "Commission") pursuant to Code

§33-314(B)(1).[3] The BCC heard the appeal on March 9th, 2006 and voted to deny the appeal and approve the development application. A2 - 1-4.

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[3] §33-314(B)(1) gives the County Commission (BCC) jurisdiction to hear appeals from decisions of the Community Zoning Appeals Boards (CZAB) on applications for district boundary changes. Other related Code provisions:

§33-313 provides that a decision of the CZAB may be appealed by any aggrieved party whose name appears in the record by filing a petition in a form prescribed by the Planning and Zoning Director and a written statement specifying in brief, concise language the grounds and reasons for reversal of the CZAB's ruling. Upon the taking of an appeal, the BCC shall conduct a *de novo* hearing and shall consider why the decision of the CZAB should or should not be sustained or modified.

§33-314(D) provides, "The Board, after hearing why the application should or should not be granted, shall consider the matter in accordance with the criteria specified in this chapter, and shall by resolution either grant or deny the application."

§33-314(E) provides, "In making any final decisions, the Commission shall be guided by the standards and guides applicable to the Community Zoning Appeals Boards or as otherwise specified in this chapter. It shall consider all relevant and material evidence offered to show the impact of the development upon Miami-Dade County."

§33-314(G) states that the BCC may defer action on any matter before it in order to inspect the site in question, **to remand to the CZAB**, or for any other justifiable and reasonable reason.

§33-316 states "No person aggrieved by any zoning resolution order...or by any decision of the Community Zoning Appeals Board may apply to the Court for relief unless such person has first exhausted the remedies provided for herein and taken all available steps provided in this article."

For the appeal to the BCC, petitioners retained counsel and two experts, Henry Iler, an urban planner, and Dr. Elio Espino, a traffic engineer who conducted a traffic study.

Planning Expert

Mr. Iler, a former member of the Dade County Planning and Zoning Staff as well as former Planning Director for Martin County, submitted a written opinion that the rezoning to OPD was improper due to both incompatibility with the surrounding low density residential and agricultural area and due to inconsistency with the County's Comprehensive Development Master Plan ("CDMP"), A4-Tab H-142-144, and he testified to the same at the hearing. T.A6 - 42-48.

He discussed that the proposed office project ,with buildings from four to eight stories up to 100 feet high, is not compatible with single-family homes on one-quarter acre lots to the north, northwest, and the single-family homes on one-acre to five-acre lots to the south, and southwest. T.A6 - 47. He pointed out that the proposed six-story parking garage on the south side of the site plan would be only 150 feet away from the edge of Petitioner's properties. T. A6 - 46-47.

Mr. Iler also discussed that the plan would deviate from normal planning practice dictating that building heights and intensity decrease as you move away from activity centers and major highways. Here, buildings between the hospital site and

the one-story single-family homes to the west, south, and north should therefore decrease in height. The RU-5A zoning, with maximum two-story buildings, would achieve that. T.A6 -47-48.

The change to OPD zoning, however, would increase height and intensity to the west of the hospital - since the tallest building on the hospital complex is 70 feet high The rezoning, allowing buildings up to 100 feet high west of the hospital complex, would create an "inverted gradient" - buildings that are higher to the west of the hospital. *Id.*

Traffic Expert

Dr. Espino, of Advanced Transportation Engineering Consultants, conducted an extensive traffic study of the relevant part of Bird Road and side roads at and around the subject site. He submitted into the record his report, A3, and written opinion. A4-Tab I-145,146. There is an aerial photo of the area in his report at A3-2.

The study, which Dr. Espino testified to, included traffic counts during both the a.m. and p.m. peak hours and an analysis with reliable scientific methodologies to predict the additional traffic to be generated by the 123,000 square foot medical office complex that the applicant proposes to construct. *Id.*, T.A6 - 52-61, 64-65. Dr. Espino's presentation to the BCC included a video of current congested traffic

conditions on Bird Road west of the Turnpike, as well as a computerized simulation of future traffic conditions. A.7 (DVD); T.A6 - 53-57.

Based on his study and analysis, Dr. Espino rendered an opinion that the additional traffic to be generated by the proposed medical office complex would cause more traffic than Bird Road can handle, leading to traffic gridlock. A4-Tab I-145,146; T.A6 - 64. (In fact, it already has gridlock conditions at rush hour on a typical weekday. T.A6 - 55, L.6.)

Put another way, his conclusion was that the resulting traffic conditions would not meet acceptable level of service standards required under the County Code. "Level of Service" (or "LOS") relates to the amount of time it takes to get from point A to point B on a particular stretch of road. T.6 - 58.

While Bird Road from 117th Avenue to 127th Avenue is required to have a level of service no worse than "E" (13 m.p.h.), the additional traffic to be generated by the project would worsen it to level "F" (12 m.p.h. at p.m. peak hour and only 5 m.p.h. at the a.m. peak hour.) A.4-145; T.A6 - 57-59.

This conclusion was based on the fact that, according to the County Public Works Department, that section of Bird Road can handle only an additional 208 vehicle trips during the peak hours. A.4 - Tab I 145. Dr. Espino's study demonstrated that the proposed medical office complex would in fact generate 382

additional trips during the afternoon peak hour, *far* in excess of the maximum to keep the roadway at LOS "E". T.6 - 59.

He therefore concluded that the proposed project would "unduly burden" the public transportation facilities, including public roads (thereby causing the rezoning to fail to meet that particular criteria under the Code) A.4 - Tab I-146.

The Planning and Zoning Department's recommendation failed to state whether or not the rezoning and proposed plan would unduly burden or affect public transportation facilities, including roads; however, it included a Public Works Department opinion that the proposed project would generate 184 additional vehicle trips, which, being under the maximum 208 trips available, would supposedly keep the road at LOS "E".

However, it was undisputed at the hearing that Public Works in fact used an incorrect trip generation rate to come up with the "184" figure. Public Works used a rate that is predicted from general office park use rather than medical office use, which has a much greater trip generation rate. T.A6 - 59-60 (Testimony of Dr. Espino - undisputed); T.A6 - 122-23.

The applicant, CAP Investments, presented its own traffic expert, Richard Garcia, who produced a written traffic study that predicted an *even higher number of additional peak hours vehicle trips* than Dr. Espino's study did - *over 400 additional*

trips. T.A6 - 60, L. 16-18. (Garcia correctly used a medical office standard for trip generation. T.A6 - 107, L. 6-10.)

Garcia nonetheless rendered an opinion that the proposed project would not make the LOS worse than "E". It turned out, however, that his study mistakenly assumed that the relevant section of Bird Road west of S.W. 119th Court was six lanes, A2 -126, when the undisputed fact is that Bird Road is only four lanes west of S.W. 119th Court. T.A6 - 56, L. 7-16; T.A6 - 122. He did not address the County's prescribed strict limit of only 208 additional trips.

Other Testimony

At the outset of Petitioners' presentation (prior to expert testimony), Petitioners presented blow-up aerial photos and diagrams to show the location of their properties and the surrounding agricultural and residential areas. A4 - TabA; T.A6 - 13-17; A.7

They also presented a series of photographs in a power point presentation, T.A6 - 22-28; A.7 (DVD), and hard copies of the same photos. A.4 - Tab B.

The photos showed Petitioners' homes and back yards (including Petitioner Dominguez's horse - T.A6 - 24, L. 11-13) and showed computerized renderings of the predicted view from their back yards if the proposed medical office project would be erected. T.A6 - 23-27.

The photos also demonstrated that Petitioners' properties are currently not visible from any structures on the hospital property. T.A27, L. 22 - p. 28, L.4; A7. Finally, the photos showed a night view of a parking garage on the hospital's property from the north side of Bird Road. A4 - TabB - 4.

Witnesses Placed Under Two-Minute Time Limit

After the presentation by Petitioners' counsel and two expert witnesses, three of the Petitioners as well as two other lay witness objectors testified in support of the appeal (against the development application). However, the Commissioner chairing the hearing, over objection of Petitioners, restricted the time of each of said witnesses to only two minutes each. T.A6 - 67-68.

The record reflects that it was extremely difficult for said witnesses to attempt to present all of their issues and facts within that limited time. T.A6 - 68-79. Their requests for additional time were denied, over objection. T.A6 - 72, L. 18-21; T.A6 - 75, L. 14-20.

Mrs. Quevedo testified as to the direct impact of the development, invading their privacy, the already-bad traffic situation, and to the fact of predominantly one to two-story development between 137th Avenue and the Turnpike. T.A6 - 68-70.

Carlos Lumpuy, a Southern Estates owner of 11970 S.W. 41st Drive, testified to the incompatibility issue and stated the "massive project" would "disrupt and

degrade our quality of life". He also objected to the violation of the restrictive covenant. T.A6 - 70-72.

Mr. Dominguez testified as to incompatibility, the restrictive covenant, and the invasion of his privacy caused by persons at the proposed office complex being able to look right into his home. T.A - 72-74. Mr. Dominguez was additionally restricted to his time by interruptions by the County attorney and Cap Investments' attorney. A7.

Mr. Won testified he and his wife bought their property and built their house in 1996 with the intention of enjoying their privacy. He expressed concern for the privacy and safety of his 12- and 10-year old children, whom strangers at the proposed office complex and parking garage would be able to see at all times while the children are in their home, back yard and swimming pool. T.A - 75-77.

Finally, Luis Garcia, of 11950 S.W. 43rd Street, objected to the proposed height as well as the invasion of privacy and congestion. T.A - 78-79.

Objection Letters

81 objection letters from surrounding neighborhood residents (supporting Petitioners' appeal) were submitted into the record. A4 - Tabs F and G. Seven additional objection letters were also found in the record.

Only one witness testified in support of the rezoning application, an employee of Kendall Regional Medical Center who simply stated, "The hospital's intentions are to lease space within this facility to provide additional medical services to the surrounding community." T.A6 - 87. However, the hospital's growth is regulated by the State of Florida which presently has limit them to the present expansion in progress.

The only other witness for applicant was its architect, Luis Naya, who described the project. T.A6 - 88-92. Mr. Naya admitted that persons on the roof of the proposed parking garage would be able to peer over a five-foot parapet to view surrounding properties. T.A6 - 91. (While he said that can be "corrected", there was no promise made to do so.)

STANDARD OF REVIEW

For appeals from administrative rulings, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *Haines City Community Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995); *Bird-Kendall v. Board of Comm.*, 695 So.2d 908, 910 (Fla. 3rd DCA 1997).

ARGUMENT

I. PETITIONERS' PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED BY THE CZAB LIMITING THE NUMBER OF WITNESSES AND BY THE BCC RESTRICTING LAY WITNESSES TO TWO MINUTES EACH.

Before proceeding to the merits of the substantive law and evidence sufficiency issues, we shall examine the blatant procedural due process violations that occurred at both the first hearing before the CZAB and the appeal hearing before the BCC. Petitioners submit that said violations rendered both hearings fundamentally unfair.

Exclusion of Witnesses

At the CZAB hearing, the Chair, upon seeing a crowd of protestors wishing to testify, restricted them to a total of only three objectors. It just about goes without saying that in our democratic, constitutional system, prohibiting objectors from testifying in this situation violates fundamental due process and freedom of speech rights under the First and Fourteenth Amendments to the U.S. Constitution and Article I of the Florida Constitution.

Neighboring property owners who appear at a zoning hearing to object to a proposed rezoning, in addition to testifying to their own desires to maintain their status quo, may provide crucial, fact-based testimony that are essential for the consideration of the quasi-judicial decision-makers on the zoning board. To exclude

any objector means that particular facts within the personal knowledge of the objector will be excluded.

Fact-based testimony that was excluded due the witness exclusions may have caused the 4-2 vote in favor of the application to change to 3-3, which would caused a denial of the application.

Although the BCC appeal hearing was "*de novo*", that fact does not undo the damage done at the CZAB hearing from exclusion of the witnesses because (A) the BCC, in the appeal context, will obviously put some weight on the fact that the CZAB, whose members are more familiar with the local area, voted in favor of the application, and (B) objectors attending the morning BCC hearing must take off work and travel a long distance to come downtown, which, in itself, will cause exclusion of some of the objectors.

The County's first mistake on this issue was to prohibit the objectors from testifying. Its second mistake was to refuse to do anything about it when it was raised as an issue at the BCC appeal hearing. The BCC at that point should have remanded the case back to the CZAB for a full and fair hearing.

Two-Minute Time Limit

The County severely compounded the above error at the BCC hearing by prohibiting neighboring homeowners, both the Petitioners and other owners, from

giving any testimony in excess of only two minutes long. Therefore, whatever remedy the mandatory BCC *de novo* hearing is intended to provide to appellants, such remedy became a nullity.

Limiting lay witnesses, who may have no experience whatsoever in public speaking, to only two minutes to express the relevant facts of which they have personal knowledge, is fundamentally unfair. Like the CZAB's exclusion of witness altogether, the two-minute restriction will necessarily cause witnesses to leave out certain facts - facts that may be crucial for the board in its determination of whether the development application has totally met all necessary criteria.

The facts that were left out could have been facts disputing allegations by the applicant - and/or they could have been facts upon which the board could determine that there was competent substantial evidence to deny the development application.

The lay witnesses testifying at the BCC appeal hearing obviously were rushing to meet the impossible two-minute deadline for them to express themselves, greatly diminishing the value of their testimony. They had to take off work and travel downtown to object to the proposed complex that would have a huge impact on their and their families' properties and daily lives. To deny them a reasonable amount of time to testify was fundamentally unfair and outrageous.

The Third DCA, in *Jennings v. Dade County*, 589 So.2d 1337, 1340 (Fla. 3rd DCA 1991), held:

> [W]e note that the quality of due process required in a quasi-judicial hearing is not the same as that to which a party to a full judicial hearing is entitled. Quasi-judicial proceedings are not controlled by strict rules of evidence and procedure. Nonetheless, certain standards of basic fairness must be adhered to in order to afford due process. Consequently, a quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied. A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.

(citations omitted)

The same Court in *Miami-Dade County v. Reyes*, 772 So.2d 24, 28-29 (Fla. 3rd DCA 2000) held:

> While the concepts of due process in an administrative proceeding are less stringent than in a judicial proceeding, they nonetheless apply. This opportunity to be heard must be meaningful. Due process envisions a law that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties.

(citations omitted).

In *Kupke v. Orange County*, 838 So.2d 598 (Fla. 5th DCA 2003), a farmer cited for code violations for storing certain equipment on this land was prohibited from presenting certain witnesses at the code enforcement hearing. The witnesses would have given fact-based testimony on the farm usage of the stored equipment, which usage would have protected it from violating the code. Declaring that the exclusion of witnesses was a due process violation, the Fifth DCA quashed the Circuit's affirmance of the code enforcement board's decision.

See also, *Metropolitan Dade Cty. v. P.J. Birds,* 654 So.2d 170, 182 (Fla. 3rd DCA 1995) (Due process requires compliance with the basic principles of "fundamental fairness" and guarantees the right to a full and fair hearing) and *Pelle v. Diners Club*, 287 So.2d 737, 738 (Fla. 3rd DCA 1974) (It is fundamental that the constitutional guarantee of due process, which extends into every proceeding, requires that the opportunity to be heard be full and fair, not merely colorable or illusive.)

II. THE FAILURE OF APPLICANT TO REVEAL THE SOUTHERN ESTATES RESTRICTIVE COVENANT TO THE CZAB CAUSED A DENIAL OF DUE PROCESS RIGHTS.

The CZAB, in hearing the application, was not informed that there is an existing recorded restrictive covenant currently limiting development at the subject

site to single-family homes. Petitioners submit that the hearing was not a full and fair hearing in the absence of that disclosure.

Petitioners, whose properties are not in the Southern Estates development, had no idea at that time of the existence of the covenant. If any Southern Estates owners were present at the CZAB hearing with knowledge of the covenant, they were unable to testify due the Chair's unfair exclusion of witnesses. Had the existence been disclosed, the CZAB may have decided to defer the item until the issue of the covenant would be resolved, one way or the other.

Petitioners submit that the same due process case law cited hereinabove is applicable to this sub-issue as well.

III. THERE WAS NO COMPETENT SUBSTANTIAL EVIDENCE ON THE ISSUE OF COMPATIBILITY WITH THE SURROUNDING AREAS.

County Code §33-311 provides that in considering zoning applications, the purposes to be accomplished are, in part:

> to provide a comprehensive plan and design to lessen the congestion in the highways; . . . to provide adequate light and air; to prevent the overcrowding of land and water; to avoid undue concentration of population; . . . with the view of giving reasonable consideration among other things to the character of the district or area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and property and encouraging the

> most appropriate use of land and water throughout the County.

The Third DCA, in *Metropolitan Dade County v. Blumenthal*, 675 So.2d 598, 605 (Fla. 3rd DCA 1995) held that on a rezoning application, the board is to consider whether the proposed zoning "is consistent with the properties adjacent to [the to-be-rezoned] property and is consistent with the actual development of the area." The facts therefore regarding the neighboring properties must be reviewed.

The only evidence purporting to support the compatibility criterion here was the County staff recommendation, which was fundamentally flawed as to the bases for its conclusion; the recommendation was therefore not within the outer limits of rationality/reasonableness and thus not "competent". Competent substantial evidence is the type which a reasonable mind would accept as adequate to support the conclusion reached. *Miami-Dade County v. Reyes*, 772 So.2d 24, 28 (Fla. 3rd DCA 2000).

The undisputed facts/testimony below demonstrate that OPD zoning with this specific site plan is highly incompatible with the single-family home properties to the south, west, and north of the site. The lay witness testimony, the planning expert's testimony, and the photographs in the record clearly demonstrate that, by any stretch

of the imagination, there is no compatibility with the surrounding properties with relation to such factors as height, density, type of use, and privacy concerns.

The County totally ignores the privacy aspect despite undisputed facts showing that Petitioners and others would totally lose privacy as to their yards, swimming pools, and the rear exposure of homes, with their extensive glass components.

The applicant's architect admitted that people on top of the parking garage would be able to peer over the 5-foot parapet. Although he claimed that "could" be modified, the board did not require any modification whatsoever as a condition of approval. Furthermore, the site plans show abundant windows on all floors of the proposed office buildings, from which individuals would have a ringside seat to the daily lives of Petitioner and their families.

If this highly intrusive, highly intensive site plan is "compatible", there is virtually nothing else that could be deemed to be incompatible with the surrounding Horse Country and Southern Estates homes.

The Third DCA, on analogous facts in *Dade County v. Frohme*, 489 So.2d 140 (Fla. 3rd DCA 1986)invalidated a rezoning from EU-1 to commercial for a property that jutted out from RU-5A (semi-professional office district) zoned land on one side, with the remaining sides being EU-1. The Court approved the Circuit Court's

decision that the County's determination on compatibility was basically irrational. The Court stated:

> The neighborhood property in question is zoned EU-1residential and is an area backing up on or bordered on one side by an office complex zoned RU-5A. The application which was approved covers a single finger projection which juts out from the RU-5A area into the EU-1 residential area and which finger would be surrounded on three sides by the EU-1 residences. Rather than being the proverbial Dutch Boy finger in the dike holding back the flood, it is more a penetrating and impermissible rape of the neighborhood, presaging the flood to come.

See also, Allapattah Community v. City of Miami, 379 So.2d 387 (Fla. 3rd DCA 1980) (invalidated rezoning to expand commercial area into residential area, as the reasons in support of the rezoning did not "make sense".)

V. THERE WAS NO COMPETENT SUBSTANTIAL EVIDENCE THAT THE TRAFFIC GENERATED BY THE PROPOSED PLAN WOULD NOT UNDULY BURDEN THE PUBLIC ROADS.

The two items of evidence purporting to support applicant on the traffic issue - the Public Works recommendation and the Garcia study - were fundamentally flawed and thus not competent evidence that the project will not cause an undue burden on the public roadways, as criterion that must be met under the code.

It was undisputed below that Public Works staff based its opinion of "additional 184 vehicle trips" to be generated by the project on a general office use standard, not a medical office use standard, which undisputedly is much higher. Both Dr. Espino and Mr. Garcia agreed that the higher medical office use figures must be used, and no one at the hearing disputed that.

Since it was also *undisputed* that the subject section of Bird Road can handle only an additional 208 vehicle trips (before it changes from LOS "E" to the legally unacceptable LOS "F", staff opinion that the additional traffic generated will meet acceptable level of service (LOS) is totally unsupportable in view of the higher number of trips predicted using the correct medical office use model.

The applicant's Garcia study presented to the BCC correctly uses the medical office model and projects even more traffic than the Espino study - but then invalidly concludes that the traffic will meet acceptable LOS. This opinion is based on a major mistake in his study: he wrongly assumed that the subject section of Bird Road west of 119th Avenue was six lines wide, when the undisputed fact is that section is only four lanes wide! The wrong assumption of two additional lanes renders his entire study invalid and therefore irrational. It cannot be considered evidence in support of the traffic issue.

Petitioners, n the other hand, presented the Espino opinion that was validly based on a 4-lane Bird Road and the correct standard of medical office traffic. Therefore, not only was there no competent substantial evidence to support applicant on the traffic issue, there was competent substantial evidence on Petitioners' side to deny the application due to its undue burden on the public roads/unacceptable level of service.

VI. THERE WAS NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE APPLICATION ON THE ISSUE OF THE IMPACT ON VALUES OF THE SURROUNDING PROPERTIES.

There is no evidence in the record that the rezoning and specific medical complex/parking garage site plan will NOT adversely effect values of the surrounding single-family properties. County staff failed to address that issue, and there is no other evidence to support applicant.

The Code mandates that the board consider the issue of conserving the value of buildings and property.

Petitioners presented sufficient testimony and evidence from which the board could infer that their property values will be adversely affected

VII. THE COUNTY DEPARTED FROM ESSENTIAL REQUIREMENTS OF THE LAW BY INCORRECTLY

APPLYING THE COMMON LAW ON THE COMPATIBILITY ISSUE TO THE FACTS OF THIS CASE.

The County failed to apply the common law compatibility standards applicable to rezoning applications.

First of all, the County staff opinion did not even address the compatibility issue in its written recommendation except to discuss it in the portion dealing with consistency with the master plan (CDMP). The CDMP consistency issue is an analysis separate from the basic zoning issue that a rezoning must be compatible with the surrounding areas. Therefore, Petitioners submit that there is actually no evidence supporting the application as to compatibility.

Even assuming, however, that staff's discussion of compatibility in the CDMP consistency opinion can be applied to the zoning side of the equation, its analysis of compatibility is not in accord with the Third DCA common law on this subject.

See, Dade County v. Frohme, 489 So.2d 140 (Fla. 3rd DCA 1986) (invalidated rezoning from EU-1 for a commercial finger jutting out from RU-5A on one side, with the remaining sides being EU-1); *Allapattah Community v. City of Miami*, 379 So.2d 387 (Fla. 3rd DCA 1980) (invalidated rezoning to expand commercial area from across street into residential area); *Metropolitan Dade County v. Blumenthal*, 675 So.2d 598 (Fla. 3rd DCA 1995) (approved County's denial of rezoning due to

incompatibility); *Miami-Dade County v. Walberg*, 739 So.2d 115 (Fla. 3rd DCA 1999) (same).

Furthermore, the County should have considered the recorded restrictive covenant in its compatibility determination. The project cannot be said to be compatible with the surrounding area protected by single-family restriction.

VIII. THE REZONING CONSTITUTES INVALID SPOT ZONING

There is no OPD zoning adjacent to or anywhere near the subject site. The property is surrounded on all sides except its east side by single-family detached homes with residential zoning. And just beyond one block further south, the area is agricultural and five-acres estates.

This situation is analogous to another Horse Country case, *Bird-Kendall v. Board of Comm.*, 695 So.2d 908, 909 (Fla. 3rd DCA 1997), which invalidated a rezoning from agricultural to business. The Court stated,

> Spot zoning is the name given to the piecemeal rezoning of small parcels of land to a greater density, leading to disharmony with the surrounding area. Spot zoning is usually thought of as giving preferential treatment to one parcel at the expense of the zoning scheme as a whole.

In characterizing the elements of spot zoning, a spot zoning challenge typically involves the examination of the following: 1) the size of the spot; 2) the compatibility

with the surrounding area; 3) the benefit to the owner and 4) the detriment to the immediate neighborhood. *Id.* *See also, Allapattah Community v. City of Miami*, 379 So.2d 387 (Fla. 3rd DCA 1980) (invalidated rezoning to expand commercial area from across street into residential area - FN9 stated spot zoning as additional reason to invalidate.)

IX. COUNTY DID NOT APPLY CORRECT LAW AS TO THE EFFECT OF SOUTHERN ESTATES RESTRICTIVE COVENANT

The County disregarded the recorded restrictive covenant simply because it is a "private" covenant, as opposed to a covenant made to the County itself. However, it is well-settled that the covenant runs with the land. See, *Marco Island Civic Ass'n v. Manzzini*, 881 So.2d 99 (Fla. 2nd DCA 2004); *Metropolitan Dade County v. Fontainbleau Gas & Wash., Inc.* (Fla 3rd DCA 1991).

Petitioners submit that the County cannot approve a rezoning upon an application with a specific site plan that is covenanted to be the *only* plan for the property where that site plan runs afoul of the recorded restrictive covenant limiting the development to single-family residential.

A long-term restrictive covenant similar to the one protecting the Southern Estates homes here was ruled be valid in *Metropolitan Dade Cty. v. Sunlink*, 642 So.2d 551, 554-56 (Fla. 3rd DCA 1992).

The rezoning with the specific site plan is unconstitutional impairment of right to contract under Art I, §10 of both the U.S. and Florida Constitutions. The right of the current homeowners who are beneficiaries of the restrictive covenant to maintain their beneficiary status should remain inviolate.

Petitioners submit that by forcing the current beneficiaries of the covenant to spend substantial amounts of money and time (which they may or may not have) to bring an injunction action in Circuit Court to enforce the covenant, the County is violating the rights of the beneficiaries. The County should uphold the rights of the beneficiaries by denying a site plan that clearly violates the covenant.

X. INCONSISTENCY OF PLAN WITH CDMP

Petitioners are raising this issue in a separate injunction action under Fla. Statute 163.3215, as required and simply bring that fact to the Court's attention.

WHEREFORE, Petitioners pray the Court to quash the development order issued in this case and to grant such other relief as is fair and appropriate.

Respectfully submitted,

CHARLES M. BARON, ESQ.
Fla. Bar No. 509825
Attorney for Petitioner
Charles M. Baron, P.A.
1380 N.E. Miami Gardens Drive
Suite 230
North Miami Beach, FL 33179
Ph. (305)944-5656
Fax (305)944-5756

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this 13th day of April, 2006 to Murray A. Greenberg, County Attorney, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128-1993 and Miami-Dade County Dept. of Planning and Zoning, 111 N.W. 1st Street, Suite 1210, Miami, FL 33128-1902.

CHARLES M. BARON, ESQ.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Petitioner was typed in WordPerfect 14-point Times New Roman.

CHARLES M. BARON, ESQ.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

RODOLFO DOMINGUEZ, RICARDO WON, FELIX QUEVEDO, AND MARGARITA QUEVEDO,

Petitioners,

vs.

MIAMI-DADE COUNTY,

Respondent.
_____/

APPELLATE DIVISION

CASE NO.:

LOWER TRIBUNAL NO.: Z-9-06

PETITIONERS' MOTION FOR 30-DAY EXTENSION OF TIME TO AMEND PETITION AND ADD FULL-SIZE PLANS TO RECORD

Petitioners, RODOLFO DOMINGUEZ, RICARDO WON, FELIX QUEVEDO, and MARGARITA QUEVEDO, by and through undersigned counsel, move the Court for a 30-day extension of time to file an Amended Petition for Writ of Certiorari in this case, and state in support thereof:

1. The rezoning development order that Petitioners seek to quash in this case was rendered by the Miami-Dade Board of County Commissioners on March 14, 2006. Petitioners are therefore filing their petition on April 13, 2006, within the 30-day period to vest this Court with jurisdiction over this matter pursuant to the Florida Rules of Appellate Procedure.

2. Although undersigned counsel represented petitioners in the proceeding below,

petitioners did not retain undersigned counsel to file the petition to this Court until the week prior to the date said petition was due.

3. In addition to the problem of having very little time to draft the petition and prepare the record appendices to file in this Court and serve on the County, undersigned counsel faced two major difficulties that intruded on his time prior to the filing deadline: (1) undersigned counsel had just moved his office on April 1, 2006 to a different suite in his office building, so was re-organizing his office; and (2) undersigned counsel became ill with a fever, preventing him from working up to par, and he was treated by a physician for such illness on April 8th, 2006.

4. Therefore, although the undersigned has drafted a petition sufficient to give the Court jurisdiction over this matter, he must, in order to effectively represent his clients and present a clear and cogent petition, conduct further examination of the record and legal research and then re-draft the petition to flesh out the statement of facts as well as legal argument in support of the petition, as well as correct typographical errors.

5. Also, the undersigned recently obtained from the County the full-size architectural plans related to the subject development order and must still make copies of said plans to be submitted into the record as an additional appendix volume. The record now being filed with the petition contains all of said plans as reduced, letter-size pages, but the full-size plans need to be filed, as they will be much easier for the Court and opposing counsel to read than the reduced-size plans now on file. The undersigned will then need to make

appropriate references in the petition to the full-size plans.

6. This motion is filed in good faith, not for purposes of harassment or delay.

7. The undersigned as of the filing of this motion was unable to confer with the County Attorney on this motion but will promptly do so and report any resolution to the Court.

WHEREFORE, Petitioners pray the Court to grant the requested extension.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on the 13th day of April, 2006 to Murray A. Greenberg, County Attorney, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128-1993 and Miami-Dade County Dept. of Planning and Zoning, 111 N.W. 1st Street, Suite 1210, Miami, FL 33128-1902.

CHARLES M. BARON, ESQ.
Fla. Bar No. 509825
Attorney for Petitioners
1380 N.E. Miami Gardens Drive
Suite 230
North Miami Beach, FL 33179
Ph. (305)944-5656
Fax (305)944-5756

ROLDOLFO J. DOMINGUEZ, OLGA DOMINGUEZ, ALINA HAAS, STEPHEN HAAS, FELIX QUEVEDO, MARGARITA QUEVEDO, RICARDO WON,

Plaintiffs,

vs.

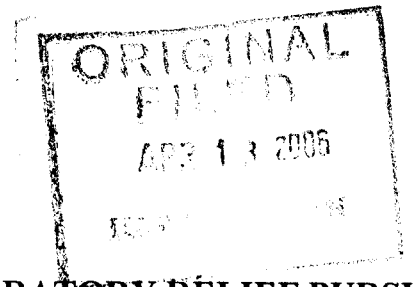
MIAMI-DADE COUNTY,

Defendant.
_____/

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.



COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF PURSUANT TO FLORIDA STATUTE SECTION 163.3215

Plaintiffs, ROLDOLFO J. DOMINGUEZ, OLGA DOMINGUEZ, ALINA HAAS, STEPHEN HAAS, FELIX QUEVEDO, MARGARITA QUEVEDO, RICARDO WON sue MIAMI-DADE COUNTY, FLORIDA for injunctive and declaratory relief, and allege:

1. This is an action pursuant to Florida Statute §163.3215(3) seeking the Court to declare that a development order rendered by Miami-Dade County on March 14, 2006, Resolution No. Z-9-06 (attached as Exhibit "A"), is inconsistent with the Miami-Dade County Comprehensive Development Master Plan ("CDMP"), and to permanently enjoin any development and/or zoning action based on or implementing said development order.

2. This Court has jurisdiction based on Florida Statutes §163.3215(3) and §26.012.

3. Plaintiffs are all aggrieved or adversely affected parties within the meaning of Florida Statute §163.3215(2). Unless the County is enjoined as prayed for, Plaintiffs will

suffer an adverse effect to an interest protected or furthered by the Miami-Dade County Comprehensive Development Master Plan, including interests related to health and safety, densities and intensities of development, transportation facilities, and environmental or natural resources.

4. The adverse interest of Plaintiffs exceed in degree the general interest in community good shared by all persons.

5. Plaintiffs own residential properties immediately adjacent to or within three blocks of the site that is the subject of the challenged development order. ROLDOLFO J. DOMINGUEZ and OLGA DOMINGUEZ own their home and property located at 11941 S.W. 43rd Street, Miami, Florida. ALINA HAAS owns her home and property located at 3530 S.W. 121st Avenue, Miami, Florida, and her husband, STEPHEN HAAS resides at said property as well. FELIX QUEVEDO and MARGARITA QUEVEDO own their home and property located at 11947 S.W. 43rd Street, Miami, Florida. RICARDO WON owns, along with his wife, his home and property located at 11955 S.W. 43rd Street, Miami, Florida. Plaintiffs' properties lie in unincorporated Miami-Dade County, Florida.

6. The subject development order granted an application by CAP Investments, LLC for a district boundary change (rezoning) of land situated at the northwest corner of S.W. 42nd Street and S.W. 119th Court in unincorporated Miami-Dade County, Florida. Said order allows rezoning from RU-5A zoning (semi-professional office district) to OPD zoning (office park district), as to allow a specific site plan proposed by applicant for a medical office complex with an eight-story building and a four-story building with 123,000 square

feet of office space and a six-level parking garage with rooftop parking. The RU-5A zoning sought to be changed prohibits any buildings in excess of two stories high and is otherwise much less intense than OPD zoning.

7. The subject development order was issued upon some of the Plaintiffs appealing a Community Zoning Appeal Board Resolution, No. CZAB10-85-05, to the Board of County Commissioners, as required under the Miami-Dade County Code to exhaust administrative remedies.

8. Some of the reasons that the challenged development order is inconsistent with the CDMP are contained in the written expert opinion presented to the County by urban planning expert Henry Iler of Iler Planning Group (attached as Exhibit "B").

9. There is no adequate remedy for Plaintiffs other than that sought in this action. Some of the Plaintiffs are petitioning this Court for Writ of Certiorari as to other aspects of the development order, but this CDMP consistency challenge must be brought in this action pursuant to §163.3215.

WHEREFORE, Plaintiffs pray the Court to:

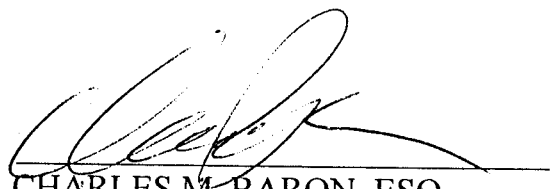
A. Declare that the challenged development order is inconsistent with the Miami-Dade County Comprehensive Development Master Plan;

B. Permanently enjoin the County from allowing the zoning action and site plan approval allowed under the challenged development order;

C. Award costs of this action; and

D. Grant such other and further relief as is fair and appropriate.

Dated: April 13, 2006.



CHARLES M. BARON, ESQ.
Fla. Bar No. 509825
Charles M. Baron, P.A.
Attorney for Plaintiffs
1380 N.E. Miami Gardens Drive
Suite 230
North Miami Beach, FL 33179
Ph. (305)944-5656
Fax (305)944-5756

Approved: _____ Mayor

Veto: _____

Override: _____

RESOLUTION NO. Z-9-06

WHEREAS, **CAP INVESTMENTS L. L. C.** applied to Community Zoning Appeals Board 10 for the following:

RU-5A to OPD

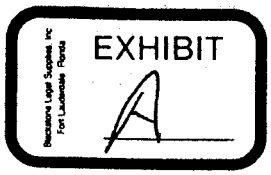
SUBJECT PROPERTY: Lots 1 – 14, Block 16, SECOND ADDITION TO SOUTHERN ESTATES, Plat book 73, Page 15.

LOCATION: The Northwest corner of S.W. 119 Court & S.W. 42 Street, Miami-Dade County, Florida, and

WHEREAS, a public hearing of Community Zoning Appeals Board 10 was advertised and held, as required by law, and all interested parties concerned in the matter were given an opportunity to be heard, and at which time the applicant proffered a Declaration of Restrictions which among other things provided:

1.) Site Plan
The Property shall be developed substantially in accordance with that plan submitted with the declaration entitled "Kendall Medical Park Proposed Bird Road Facility," as prepared by Naya Architects, dated, signed, and sealed July 28, 2005, and consisting of 12 sheets.

WHEREAS, upon due and proper consideration having been given to the matter it was the opinion of Community Zoning Appeals Board 10 that the requested district boundary change to OPD would be compatible with the neighborhood and area concerned and would not be in conflict with the principle and intent of the plan for the development of Miami-Dade County, Florida, and should be approved, and that the proffered Declaration of Restrictions was accepted and said application was approved by Resolution No. CZAB10-85-05, and



WHEREAS, **RODOLFO J. DOMINGUEZ, RICARDO WON, FELIX QUEVEDO and MARGARITA QUEVEDO** appealed the decision of Community Zoning Appeals Board 10 to the Board of County Commissioners for the following:

RU-5A to OPD

SUBJECT PROPERTY: Lots 1 – 14, Block 16, SECOND ADDITION TO SOUTHERN ESTATES, Plat book 73, Page 15.

LOCATION: The Northwest corner of S.W. 119 Court & S.W. 42 Street, Miami-Dade County, Florida, and

WHEREAS, a public hearing of the Board of County Commissioners was advertised and held, as required by the Zoning Procedure Ordinance, and all interested parties concerned in the matter were given an opportunity to be heard, and at which time the applicant proffered a Declaration of Restrictions which among other things provided:

1.) **Site Plan**
The Property shall be developed substantially in accordance with that plan submitted with the declaration entitled "Kendall Medical Park Proposed Bird Road Facility," as prepared by Naya Architects, dated, signed, and sealed July 28, 2005, and consisting of 12 sheets.

WHEREAS, this Board has been advised that the subject application has been reviewed for compliance with concurrency requirements for levels of services and, at this stage of the request, the same was found to comply with the requirements, and

WHEREAS, after reviewing the record and decision of Community Zoning Appeals Board 10 and after having given an opportunity for interested parties to be heard, it is the opinion of this Board that the grounds and reasons alleged by the appellants to over turn the decision of Community Zoning Appeals Board 10 in Resolution No. CZAB10-85-05 were insufficient to merit a reversal of the decision and the appeal should be denied and the decision of Community Zoning Appeals Board 10 should be sustained, and that the requested district boundary change to OPD would be compatible with the neighborhood and area concerned and would not be in conflict with the principle and intent of the plan

for the development of Miami-Dade County, Florida, and should be approved, and that the proffered Declaration of Restrictions should be accepted, and

WHEREAS, a motion to deny the appeal without prejudice and sustain the decision of Community Zoning Appeals Board 10, accept the proffered Declaration of Restrictions, and approve the application, was offered by Commissioner Sen. Javier D. Souto, seconded by Commissioner Jose "Pepe" Diaz, and upon a poll of the members present the vote was as follows:

Bruno A. Barreiro	absent	Dennis C. Moss	aye
Jose "Pepe" Diaz	aye	Dorrin D. Rolle	aye
Audrey M. Edmonson	aye	Natacha Seijas	aye
Carlos A. Gimmenez	aye	Katy Sorenson	aye
Sally A. Heyman	aye	Rebecca Sosa	aye
Barbara J. Jordan	aye	Sen. Javier D. Souto	aye

Chairperson Joe A. Martinez absent

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Miami-Dade County, Florida, that the appeal be and the same is hereby denied without prejudice and the decision of Community Zoning Appeals Board is sustained.

BE IT FURTHER RESOLVED that the requested district boundary-change to OPD be and the same is hereby approved and said property is hereby zoned accordingly.

BE IT FURTHER RESOLVED that Resolution No. CZAB10-85-05 remains in full force and effect

BE IT FURTHER RESOLVED that, pursuant to Section 33-6 of the Code of Miami-Dade County, Florida, the County hereby accepts the proffered covenant and does exercise its option to enforce the proffered restrictions wherein the same are more restrictive than applicable zoning regulations.

The Director is hereby authorized to make the necessary changes and notations upon the maps and records of the Miami-Dade County Department of Planning and Zoning.

THIS RESOLUTION HAS BEEN DULY PASSED AND ADOPTED this 9th day of March, 2006, and shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

No. 05-10-CZ10-6
ej

HARVEY RUVIN, Clerk
Board of County Commissioners
Miami-Dade County, Florida

By KAY SULLIVAN
Deputy Clerk

THIS RESOLUTION WAS TRANSMITTED TO THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS ON THE 14TH DAY OF MARCH, 2006.

STATE OF FLORIDA

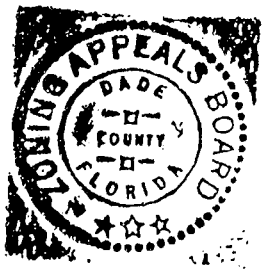
COUNTY OF MIAMI-DADE

I, Deputy Clerk's Name, as Deputy Clerk for the Miami-Dade County Department of Planning and Zoning as designated by the Director of the Miami-Dade County Department of Planning and Zoning and Ex-Officio Secretary of the Board of County Commissioners of said County, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. Z-9-06 adopted by said Board of County Commissioners at its meeting held on the 9th day of March, 2006.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this the 14th day of March, 2006.

Earl Jones, Deputy Clerk (3230)
Miami-Dade County Department of Planning and Zoning

SEAL



CAP Investments LLC Zoning Application
Kendall Medical Park Bird Road Facility
Miami-Dade County PH# Z05-067

Expert Urban Planning Report Prepared for Rodolfo Dominguez, Ricardo Won, Felix Quevedo and Margarita Quevedo

by: Henry Iler, AICP
Principal
Iler Planning Group
2-27-06

Introduction

CAP Investments has previously submitted a zoning application to Miami-Dade County to rezone 3.4 acres on the northwest corner of SW 119th Court and SW 42nd Street from RU-5A to OPD district. This rezoning was approved by the MDC Community Zoning Appeals Board 10 via Resolution No. CZAB10-85-05 on November 8, 2005.

I have been retained by four (4) residents located south of the proposed office park to render expert urban planning opinion as the consistency of the rezoning action and proposed site plan with the County's Comprehensive Development Master Plan, Adopted 2005 and 2015 Land Use Plan, and Land Development Code, and its compatibility with the surrounding planned and existing development.

Background Information

The property is located approximately ¼ mile west of the Homestead Extension of the Florida Turnpike (HEFT). The future land use designation for the subject 3.4 acre site is Institutional and Public Facility (IPF). IPF land is also located adjacent to the east of the CAP site where the Kendall Regional Medical Center and related buildings are situated.

Land use designations in other areas around the site consists of existing Low Density Residential (2.5 to 6 units per acre) across Bird Road to the north and west with a predominance of single-family detached home development. A large agriculturally-designated area lies to the south and west of the site. This area is known as "Horse Country" and exhibits a decidedly-equestrian lifestyle on 1-5 acre lots containing single-family detached homes and related accessory buildings.

The site was rezoned from RU-1 to RU-5A in 1997. Prior to November, 2005, the CAP site was zoned RU-5A (Semi-Professional Office District) which allows many types of office uses with buildings not exceeding 2 stories or 24 feet in height and FAR ranging from 0.4 (1st floor) to 0.6 (2nd floor). Retail and industrial uses are not permitted, except for a small snack bar in each building. Zoning around the site

Received by
Zoning Agenda Coordinator
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consists of BU-2 to the east, RU-1 to the north and west, and EU-1 to the south.

The Office Park District (OPD) allows business and professional offices catering to provision of services. Laboratories for scientific and industrial research and development are permitted. Retail and industrial uses are permitted as accessory uses and may be developed up to 15% of the building interior square footage. FAR ranges from 0.3 (1st floor) to 0.08 (additional stories). Maximum building height is 8 stories or 100 feet.

The proposed park is planned to consist of 2 office buildings, 4 and 8 stories tall, and a parking garage (6 stories).

Findings

In developing these findings I relied on the MDC Comprehensive Development Master Plan (CDMP), 2005 and 2015 Land Use Plan Map, County Land Development Code, State Rule 9J-5, Pinecrest Lakes case (Martin County), A Planner's Dictionary published by the American Planning Association (2004), CAP zoning application materials, County zoning maps, County aerials and field observations. I will testify to the following:

1) The proposed project is inconsistent with the County's adopted CDMP, specifically the IPF land use category description. The IPF description states that if no public agency intends to use the site and owner wants to develop the site for a different use, "the land may be developed for a use or a density comparable to and compatible with surrounding development..." The site is surrounded on approximately 70% of its boundary by Low Density and Agricultural land use with 1 to 2 story structures, and an abundance of open space (> 50%). If the area within 1 mile of the CAP site is examined, the predominance of Low Density and Agricultural land use is over 90%. A private office park with 4-8 story office buildings and 25-29% open space is incompatible with the use and density/intensity of the predominant low and agricultural density land use pattern adjacent to the site and within the general area.

2) If the written intent of the IPF category and industry practice is followed, private office space is not allowed in IPF. The IPF description states that the category "illustrates, for informational purposes, only the location of major institutional uses and utilities of metropolitan significance." In typical planning terminology, institutional use is defined as public, public/private, nonprofit and/or quasi-public use. While the IPF category does allow "office use," the category description and standard planning usage implies that this use is limited to office use associated with typical institutional and public facility uses. There are no such uses planned for this site based on the information reviewed to-date.

3) The rezoning is contrary to FLUE Policy 4C which states "residential neighborhoods shall be protected from intrusion by uses that would disrupt or degrade the health, safety, tranquility, character, and overall welfare of the

neighborhood by creating such impacts as excessive density, noise, light, glare, odor, vibration, dust or traffic." The proposed site plan would intrude substantially on the surrounding low density and agricultural neighborhoods.

4) The rezoning is incompatible with the predominant land use pattern and existing low density and agricultural neighborhoods adjacent to, and within the general area surrounding the CAP site. Low density EU-1 and RU-1 zoning predominates in this area and next to the site. A private office park with 4-8 story office buildings and 25-29% open space is incompatible with single-family detached homes on ¼ acre or larger lots.

5) The building heights proposed are inconsistent with standard planning practice which normally dictates that building heights and intensity decrease as development moves away from major highways and metropolitan activity centers, and into suburban and rural low density neighborhoods. In this case, the adjacent Kendall Regional Hospital site has buildings 4-6 stories in height. In order to lessen the impact on the low density areas to the west, the CAP site should be held to a height more consistent with the existing single-family detached residential development, and not a continuation and/or increase of the height pattern of from the hospital site.

Signed:

Henry B. Iler, AICP
ILER PLANNING GROUP
11211 Prosperity Farms Road
Suite 205B
Palm Beach Gardens, FL 33410